

**Aug 16, 2018**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

SEAN F. MCAVOY, CLERK

JUAN C.,<sup>1</sup>

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

No. 4:17-CV-05159-EFS

**ORDER GRANTING SUMMARY JUDGMENT  
FOR DEFENDANT**

Before the Court, without oral argument, are cross summary judgment motions. ECF Nos. 12 & 13. Plaintiff, Juan C., appeals the Administrative Law Judge's (ALJ) denial of benefits. See ECF Nos. 1 & 12. Defendant, the Commissioner of Social Security, asks the Court to affirm the ALJ's determination that Plaintiff is not disabled and is capable of performing substantial gainful activity in a field for which a significant number of jobs exist in the national economy. See ECF Nos. 8 & 15. After reviewing the record and relevant authority, the Court is fully informed. For the reasons set forth below, the Court denies Plaintiff's Motion for Summary Judgment and grants Defendant's Motion for Summary Judgment.

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<sup>1</sup> To protect the privacy of social-security plaintiffs, the Court refers to them by first name and last initial. See proposed draft of LCivR 5.2(c). When quoting the Administrative Record in this order, the Court will substitute "Plaintiff" for any other identifier that was used, and – for the sake of readability – the Court will refrain from using brackets to indicate such substitutions.

1                                   **I.     Facts and Procedural History**<sup>2</sup>

2           Plaintiff was born in 1971. See Administrative Record, ECF  
3 No. 9, (AR) 220. In February 2012, after Plaintiff suffered a  
4 workplace injury, an MRI of his lumbar spine showed desiccation of L4-  
5 5, disc bulging, facet hypertrophy, loss of disc height, posterior  
6 annular fissure, endplate irregularities, and spinal canal narrowing.  
7 AR 527. And in March 2013, Plaintiff underwent a left L4-5 far  
8 lateral discectomy with an endoscopic approach. AR 576. Since then,  
9 Plaintiff has continued to see his medical care providers regarding  
10 back-pain management. See, e.g., AR 700-703.

11           In April 2013, Plaintiff protectively filed SSI and DIB  
12 applications, alleging an onset date of January 7, 2013. AR 220. His  
13 applications were denied initially and upon reconsideration. AR 100,  
14 123. After conducting a hearing in September 2015 and a supplemental  
15 hearing in February 2016, Administrative Law Judge (ALJ) Ilene Sloan  
16 issued a decision finding Plaintiff not disabled for purposes of the  
17 Social Security Act. AR 32.

18           The ALJ found that Plaintiff has the following severe  
19 impairments: "lumbar spine degenerative disc disease with stenosis and  
20 disc protrusions with chronic left lower extremity referred/radicular  
21 pain, status post three hernia repairs, status post two left hand  
22 tendon repair, and obesity." AR 23. Regarding Plaintiff's residual  
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25   <sup>2</sup> Detailed facts are contained in the administrative hearing  
26 transcript, the ALJ's decision, and the parties' briefs. The  
Court summarizes only those facts that are relevant to its  
decision.

functional capacity (RFC), after taking those impairments into consideration, the ALJ found as follows:

Plaintiff has the residual functional capacity to perform sedentary work as defined in 20 CFR 404.1567(b) and 416.967(b) except Plaintiff would be able to occasionally climb ramps and stairs, ladders, ropes, and scaffolds. Plaintiff would be able to frequently balance. Plaintiff would be able to occasionally stoop, kneel, and crouch. Plaintiff would never be able to crawl. Plaintiff must avoid concentrated exposures to hazards such as moving machinery and unprotected heights.

AR 25.

Given those limitations, the ALJ found that Plaintiff is unable to perform any of his past relevant work. AR. 31. But, based on testimony by a vocational expert, the ALJ went on to find that Plaintiff is "capable of making a successful adjustment to other work that exists in significant numbers in the national economy," namely, a telephone solicitor. AR 31-32.

The Appeals Council denied Plaintiff's request for review, AR 1, making the ALJ's decision the final agency action for purposes of judicial review.<sup>3</sup> Plaintiff filed this lawsuit on October 2, 2017, appealing the ALJ's decision. ECF No. 1. The parties then filed the present summary-judgment motions. ECF Nos. 12 & 13.

## **II. Standard of Review**

The Court will uphold an ALJ's determination that a claimant is not disabled if the ALJ applied the proper legal standards and there is substantial evidence in the record as a whole to support the

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<sup>3</sup> See 42 U.S.C. § 1383(c)(3); 20 C.F.R. §§ 416.1481, 422.210.

1 decision.<sup>4</sup> Substantial evidence is "more than a mere scintilla, but  
2 less than a preponderance. It means such relevant evidence as a  
3 reasonable mind might accept as adequate to support a conclusion."<sup>5</sup>

### 4 **III. Applicable Law & Analysis**<sup>6</sup>

5 Plaintiff raises three issues: (1) whether the ALJ improperly  
6 rejected the opinions of Plaintiff's medical providers; (2) whether  
7 the ALJ erred in rejecting Plaintiff's subjective complaints; and  
8 (3) whether the hypothetical posed to the vocational expert at step  
9 five accurately reflected all of Plaintiff's limitations. ECF No. 12  
10 at 5. The Court addresses each issue in turn and, for the reasons  
11 that follow, affirms the ALJ's decision.

#### 12 **A. Medical Providers' Opinions**

13 Plaintiff first argues that "the ALJ improperly rejected the  
14 opinions of his treating and examining providers, including [ARNP] Ang  
15 and [ARNP] Roberts." ECF No. 12 at 7. For purposes of Plaintiff's  
16 claim, advanced nurses, such as ARNP Ang and ARNP Roberts, are not  
17 considered "acceptable medical sources" but are instead "other  
18 sources" whose opinions are generally entitled to less weight than  
19 that of a physician.<sup>7</sup> An ALJ need only give "germane reasons,"  
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21 <sup>4</sup> *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir. 1983) (citing 42  
U.S.C. § 405(g)).

22 <sup>5</sup> *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573, 576  
(9th Cir. 1988) (citations and internal quotation marks omitted).

23 <sup>6</sup> The applicable five-step disability determination process is set  
24 forth in the ALJ's decision, AR 20-21, and the Court presumes the  
parties are well acquainted with that standard process. As such,  
the Court does not restate the five-step process in this order.

25 <sup>7</sup> See *Huff v. Astrue*, 275 F. App'x 713, 716 (9th Cir. 2008). But see  
26 20 C.F.R. § 404.1502 (adding licensed advanced practice nurse to  
the list of "acceptable medical sources" for claims filed on or  
after March 27, 2017).

1 supported by substantial evidence, to discredit other-source  
2 opinions.<sup>8</sup>

3  
4 **1. The ALJ provided germane reasons, supported by substantial  
evidence, for rejecting ARNP Ang's opinion.**

5 As relevant here, in June 2015, Desiree Ang, ARNP – Plaintiff's  
6 treating provider who was overseeing his degenerative disc disease –  
7 filled out a checkbox medical questionnaire. AR 279. ARNP Ang checked  
8 a box that stated, "I do not believe that this patient is capable of  
9 performing any type of work on a reasonably continuous, sustained  
10 basis." AR 759. In addressing this opinion, the ALJ stated as  
11 follows:

12 I give this opinion no weight because Mrs. Ang did not  
13 provide an explanation for the claimant's limitation or a  
14 function-by-function analysis of the claimant's impairments  
15 (SSR 96-8p). Moreover, Ms. Ang is not [an] acceptable  
16 medical source with the expertise necessary to render such  
an opinion. In addition, I find the opinions of the  
medical expert to be the most informed, consistent with the  
medical evidence of record, and consistent with the record  
as a whole.

17 AR 30.

18 In her decision, the ALJ correctly noted that ARNP Ang's opinion  
19 regarding Plaintiff's inability to work was unsupported by any  
20 explanation or a function-by-function analysis.<sup>9</sup> Plaintiff points to  
21 a series of treatment notes that – he argues – support ARNP Ang's  
22 opinion that he is unable to perform any work activity on a consistent  
23 basis. ECF No. 12 at 10. For instance, Plaintiff quotes ARNP Ang as

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<sup>8</sup> *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012).

25 <sup>9</sup> *See Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th  
26 Cir. 2004) (citations omitted). (holding that an ALJ may discount  
medical-source opinions that are conclusory, brief, and unsupported  
by the record as a whole or by objective medical findings).

1 stating, "His gait was antalgic, he had diminished sensation, positive  
2 straight leg raise, and difficulty with heel-toe walking." ECF No. 12  
3 at 9. The record shows, however, that ARNP Ang actually reported as  
4 follows: "*Mild* difficulty with heel and toe walking, favoring the  
5 left. Gait is *slightly* antalgic, *but steady*." AR 575 (emphasis  
6 added).

7 Further, although some of ARNP Ang's treatment notes arguably  
8 could have supported her opinion, others were inconsistent with such  
9 an opinion.<sup>10</sup> And ARNP Ang did not indicate which particular  
10 treatment notes or test results she was relying upon in arriving at  
11 her June 2015 opinion. Moreover, the ALJ acted within her discretion  
12 in deciding to give more weight to the opinion of the medical expert,  
13 who was an orthopedic surgeon and therefore more highly trained than  
14 an ARNP in the field of orthopedic medicine.<sup>11</sup>

15 The ALJ provided germane reasons, supported by substantial  
16 evidence, for rejecting ARNP Ang's opinion. The ALJ did not err in  
17 assigning it no weight.

18 **2. The ALJ provided germane reasons, supported by substantial**  
19 **evidence, for discounting ARNP Roberts' opinion.**

20 In October 2013, Jason Roberts, ARNP, completed an assessment in  
21 which he opined that Plaintiff was limited to sedentary work. AR 587.  
22 The ALJ gave this opinion little weight because "even though it is  
23 consistent with the medical evidence supporting the claimant's  
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25 <sup>10</sup> See, e.g., AR 700 ("Plaintiff's current medication regimen has been  
26 moderately sufficient in keeping his symptoms down to a more  
manageable level.").

<sup>11</sup> See *Gomez v. Chater*, 74 F.3d 967, 970-71 (9th Cir. 1996).

1 sedentary residual functional capacity, Mr. Roberts did not provide an  
2 explanation for the claimant's limitation and a function-by-function  
3 analysis of the claimant's impairments." AR 29.

4 As with ARNP Ang's opinion, the ALJ provided a germane reason,  
5 supported by substantial evidence, for discounting ARNP Roberts'  
6 opinion.<sup>12</sup> The ALJ did not err by giving it little weight. Even  
7 more, Plaintiff does not show how the ultimate outcome would have been  
8 different if the ALJ gave greater weight to ARNP Roberts' opinion.  
9 Indeed, the ALJ's RFC findings arguably included all the functional  
10 limitations opined by ARNP Roberts.<sup>13</sup>

11 **B. Plaintiff's Subjective Complaints<sup>14</sup>**

12 In making an adverse credibility determination regarding a  
13 claimant, an ALJ may consider, among other things, (1) the claimant's  
14 reputation for truthfulness; (2) inconsistencies in the claimant's  
15 testimony or between his testimony and his conduct; (3) the claimant's  
16 daily living activities; (4) the claimant's work record; and (5) the  
17 nature, severity, and effect of the claimant's condition.<sup>15</sup> Here –  
18 contrary to Plaintiff's second argument, see ECF No. 12 at 11 – the  
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20 <sup>12</sup> See *Batson*, 359 F.3d at 1195 (citations omitted). (holding that an  
21 ALJ may discount medical-source opinions that are conclusory,  
22 brief, and unsupported by the record as a whole or by objective  
medical findings).

23 <sup>13</sup> Compare AR 25 (ALJ limiting RFC to sedentary work with restrictions  
on activities such as stooping, kneeling, and crouching) with  
AR 586 (ARNP Roberts indicating "moderate" limitations in areas  
24 such as walking, reaching, and crouching).

25 <sup>14</sup> The standard for analyzing a claimant's symptom testimony is set  
forth in the ALJ's decision, see AR 25, and the Court presumes the  
parties are familiar with that standard. As such, the Court does  
26 not restate it here.

<sup>15</sup> *Thomas v. Barnhart*, 278 F.3d 947, 958-59 (9th Cir. 2002).

1 ALJ provided specific, clear and convincing reasons for rejecting  
2 portions of Plaintiff's symptom testimony.<sup>16</sup>

3 The ALJ had good reason to question Plaintiff's reputation for  
4 truthfulness. As the ALJ noted, Plaintiff admitted to frequently  
5 lying about being out of work. He also admitted that he did not  
6 inform the different government agencies about his surgeries in order  
7 to continue collecting unemployment benefits. AR 27. In her decision,  
8 the ALJ said the following:

9 In addition, his receipt of unemployment benefits further  
10 erode the consistency of the claimant's allegations. In  
11 the third quarter of 2013, the claimant received and  
12 exhausted unemployment benefits (7D, 6F). In order to  
13 receive unemployment benefits, the claimant had to certify  
14 he was "able to, available for, and actively seeking full  
15 time work." The claimant offered no persuasive explanation  
16 at his hearing for this major inconsistency in his claims.

17 AR. 26.

18 The ALJ articulated even more inconsistencies between  
19 Plaintiff's testimony, the record, and his daily living activities.  
20 For instance, the ALJ found that Plaintiff "is able to go grocery  
21 shopping without the need for assistance. He cooks and prepares meals  
22 independently." AR 26.

23 Plaintiff argues that the ALJ's analysis "is not an accurate  
24 depiction" of his activities. ECF No. 12 at 12. As support, Plaintiff  
25 points out that he "testified he did *not* cook and would instead have a  
26 protein shake that lasted him all day." ECF No. 12 at 12 (emphasis in  
original). He also testified that grocery shopping "was done only  
when his children were there to carry the groceries because he could

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<sup>16</sup> Cf. *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014)

1 not." ECF No. 12 at 12. Plaintiff's arguments, however, only  
2 highlight the inconsistencies that were of concern to the ALJ. After  
3 all, Plaintiff had recently reported being able to grocery shop and  
4 cook meals unaided.<sup>17</sup>

5 The ALJ stated clear and convincing reasons that were supported  
6 by substantial evidence in finding Plaintiff's subjective complaints  
7 were not entirely credible. Thus, she did not err by discounting  
8 Plaintiff's symptom testimony.

9 **C. The ALJ's Hypothetical to the Vocational Expert**

10 In January 2014, Patrick B. Reilly, Ph.D. performed a  
11 psychological examination of Plaintiff. AR 592-97. Plaintiff's last  
12 argument is that the ALJ's hypothetical at step five "failed to  
13 account for limitations set forth by [ARNP] Ang and Dr. Reilly." ECF  
14 No. 12 at 15. As a preliminary matter, as discussed above, the Court  
15 already found the ALJ did not err by omitting the limitations set  
16 forth by ARNP Ang.

17 As to Dr. Reilly's report, Plaintiff cherry-picks particular  
18 portions and ignores important aspects of Dr. Reilly's opinion.  
19 Plaintiff includes a quote in which Dr. Reilly stated that "there does  
20 appear to be a moderate degree of decompensation in a work like  
21 setting related to interpersonal interactions, task persistence, self-  
22 regulations, self-management, task accomplishment and generalized  
23 organizational skills." ECF No. 12 at 15 (citing AR 596). Plaintiff

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24 <sup>17</sup> In a 2014 mental evaluation of Plaintiff, Patrick B. Reilly, Ph.D.  
25 stated as follows: "With regard to grocery shopping, the claimant  
26 reports being able to independently achieve the task without the  
need for assistance. In terms of cooking, he reports cooking and  
preparing meals independently." AR 595.

1 also relies on a quote stating that Plaintiff's "prognosis was poor  
2 for the next 12 months and his persistent symptoms brought into doubt  
3 the likelihood of a full recovery." ECF No. 12 at 15 (citing AR 596).  
4 Plaintiff uses these statements out of context to argue that the ALJ  
5 "did not include any associated limitations on interpersonal  
6 interactions, task persistence, or other limitations outlined by  
7 Dr. Reilly in the hypothetical to the vocational expert." ECF No. 12  
8 at 15.

9 Dr. Reilly's report, however, did not set forth any such  
10 limitations. In the "Functional Assessment" portion of the report,  
11 Dr. Reilly gave the following opinion:

12 Sustained concentration and persistence: The claimant's  
13 attention and concentration characteristics appear to be  
14 *within normal limits* based on performance data related to  
serial sequences, mental rotation, and execution in multi-  
step directions.

15 Social interaction: The claimant's social interaction  
16 characteristics appear to be *within normal limits* based on  
17 performance data related to general appearance, attitude,  
general behavior, and the ability to follow conversation  
appropriately.

18 Adaptation: The claimant's adaptive characteristics and  
19 abilities appear to be *within normal limits* based on  
20 report, history, and evidence of activities of daily  
living, social functioning, task persistence, and pacing of  
living skills.

21 AR 597.

22 Thus, the ALJ met her burden at step five and did not err by  
23 omitting any additional limitations as to interpersonal interactions  
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1 or task persistence in the hypothetical posed to the vocational  
2 expert.<sup>18</sup>

#### 3 **IV. Conclusion**

4 In summary, substantial evidence in the record as a whole  
5 supports the ALJ's determination.<sup>19</sup> The ALJ provided germane reasons,  
6 supported by substantial evidence, for rejecting the opinions of ARNP  
7 Ang and ARNP Roberts.<sup>20</sup> Similarly, the ALJ provided clear and  
8 convincing reasons, supported by substantial evidence, for discounting  
9 Plaintiff's subjective symptom testimony.<sup>21</sup> And, when posing the  
10 hypothetical to the vocational expert, the ALJ was not required to  
11 include additional limitations based on Dr. Reilly's report.

12 Accordingly, **IT IS HEREBY ORDERED:**

13 **1.** Plaintiff's Motion for Summary Judgment, **ECF No. 12**, is  
14 **DENIED.**

15 **2.** Defendant's Motion for Summary Judgment, **ECF No. 13**, is  
16 **GRANTED.**

17 **3.** For the foregoing reasons, the Commissioner's final  
18 decision is **AFFIRMED.**

19 **4.** The Clerk's Office is directed to enter **JUDGMENT** for  
20 Defendant.

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21 <sup>18</sup> See *Shaibi v. Berryhill*, 870 F.3d 874, 880 (9th Cir. 2017) (holding  
22 that an ALJ's interpretation need only be rational to be upheld);  
23 see also *Turner v. Comm'r of Soc. Sec.*, 613 F.3d 1217, 1222-23 (9th  
24 Cir. 2010) (holding that the hypothetical posed to a vocational  
expert need only be consistent with credibly assessed limitations).

24 <sup>19</sup> See *Molina*, 674 F.3d at 1121.

25 <sup>20</sup> See *id.* at 1111. *C.f.* *Haagenson v. Colvin*, 656 Fed. App'x 800, 802  
26 (9th Cir. 2016) (holding that ALJ's dismissal of opinions of nurse  
and counselor solely because they were "other sources" was  
reversible error).

<sup>21</sup> See *Thomas*, 278 F.3d at 959.

1           5.     The case shall be **CLOSED**.

2           **IT IS SO ORDERED.** The Clerk's Office is directed to enter this  
3 Order, enter Judgment for Defendant, and provide copies to counsel.

4           **DATED** this   16<sup>th</sup>   day of August 2018.

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6                               s/Edward F. Shea  
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                              EDWARD F. SHEA  
7                               Senior United States District Judge  
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